UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1155
13 August 1992

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Forty-fifth session

SUMMARY RECORD OF THE 1155th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 16 July 1992, at 10 a.m.

Chairman: Mr. POCAR

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GE.92-16403/4776B (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Mongolia (CCPR/C/64/Add.2)

1. At the invitation of the Chairman, Mr. Amarsanaa (Minister of Justice of Mongolia and Head of the Mongolian delegation) and Mr. Boldbaatar (Mission Attaché) took places at the Committee table.

2. Mr. AMARSANAA (Mongolia), introducing the third periodic report (CCPR/C/64/Add.2), noted that, since the presentation of the previous report, Mongolia had undergone profound upheaval in the wake of the changes that had occurred throughout the world. At its ordinary session in January, the Great People's Khural, the highest representative body, had adopted a new Constitution and fixed the modalities of its implementation. That was a historic event, because the new Constitution, adopted with the support of the entire population, was the start of a renewal and reflected a readiness to introduce democracy. Freed of the distorted ideologies that had been imposed upon it for decades, the country was currently facing the very difficult task of reconciling the values of the civilized world with the best Mongolian traditions.

3. The Government had undertaken to evaluate the internal and external situation so as to take all measures conducive to creating favourable conditions for the country's development and the implementation of a policy based upon the principles of humanism and social justice. It had adopted an entire set of measures aimed at raising the standard of living of workers, introducing a market economy based on good international relations, developing natural resources and stimulating the intellectual potential of the country. The transition would take place through the freeing of prices, the privatization of State property, the creation of free associations and enterprises and the introduction of a new banking, financial and fiscal system. To that end, the Government had already adopted legislation in a number of areas: taxes, Customs, social insurance, currency, privatization and bankruptcy.

4. Since the presentation of the second periodic report, Mongolia had acceded to eight international instruments, including the Optional Protocol to the Covenant. Thus, nationals of the country could apply to the Committee in the event of human rights violations. The Government had also announced its intention to accede to the Convention against Torture and the Convention relating to civil procedure, The Hague, those instruments having been submitted to the Parliament for consideration.

5. His delegation remained at the Committee's disposal to reply to any questions it might wish to ask.

6. The CHAIRMAN invited the Mongolian delegation to reply to the six questions contained in section I of the list of issues, which read:

"I. Constitutional and legal framework within which the Covenant is implemented; non-discrimination and equality of the sexes (arts. 2, 3 and 26)

(a) Has any change in the status of the Covenant within the Mongolian legal system been brought about by the new Constitution? To what extent have the provisions of the Covenant been taken into account in the formation of the new Constitution and amending legislation (paragraph 3 of the report)?

(b) Please clarify the relationship between supreme legislative and executive organs of Mongolia and their respective role in so far as the implementation of the Covenant is concerned (paragraph 5 of the report).

(c) Has the role of the Procurator's Office changed under the new Constitution and laws?

(d) Please provide information on cases, if any, during the period under review where the provisions of the Covenant were directly invoked before the courts or referred to in court decisions.

(e) What measures have been taken to compensate victims of past violations of human rights? Please comment on the activities of the Commission on the Rehabilitation of Persons Subjected to Unlawful Repression and elaborate on the nature of compensation being offered to citizens who had suffered from damage caused by a wrongful conviction, wrongful prosecution or wrongful detention in custody (paragraphs 22 and 23 of the report).

(f) Please clarify in which respects the rights of aliens who do not benefit from the special agreements mentioned in paragraph 9 of the report are restricted as compared with those of citizens."

7. Mr. AMARSANAA (Mongolia), replying to the question in paragraph (a), said that the provisions of the Covenant had been taken into account in drafting the Constitution of January 1992. The same applied to all the new legislation referred to earlier; the various codes, in particular concerning economic offences, were great improvements over their earlier versions.

8. With regard to the relationship between legislative and executive bodies and their role in so far as the implementation of the Covenant was concerned, under the new Constitution the highest body of the country was the Great People's Khural, which was composed of 76 members and chaired by the President of the People's Republic. Its powers were set out in article 25 of the new Constitution, the text of which had been distributed in English to the members of the Committee.

9. Mongolia had had a Procurator's Office based on the Soviet model which was responsible for prosecution; that institution was still in existence, but its role had changed considerably, certain functions having been eliminated, particularly its investigative powers. It was expected that a bill on the Procurator's Office, currently being drafted, would be adopted by the Great People's Khural in November 1992. The Procurator alone would have investigative powers and would also focus on questions relating to labour law. The President of the Great People's Khural would appoint the Procurator for a period of six years.

10. As to directly invoking the Covenant before the courts, in the period under review that instrument's provisions had in fact been taken into consideration in court decisions. The new Constitution enshrined the principle of the primacy of international instruments. Mongolia had withdrawn its reservations with regard to the competence of the International Court of Justice, and it spared no effort to make national legislation as consistent as possible with international instruments.

11. With regard to the compensation of victims of past human rights violations, a law adopted in 1990 provided for compensation for damage caused by illegal actions on the part of the police and the courts. In the 1930s, the People's Revolutionary Party had been involved in acts that had violated human rights, and the majority of the 30,000 or so victims of those acts had already been rehabilitated. A decree had been promulgated to compensate the victims and their families, and a bill on compensation was being drafted.

12. Concerning the equality of rights and the legal protection of aliens, Mongolian legislation applied, along with agreements on legal assistance concluded with other States; since 1990, such agreements had been signed with China and France, and negotiations were under way with Russia, Kazakhstan and Germany. The nationals of a State that signed an agreement with Mongolia received legal assistance in Mongolia in civil and criminal cases, as well as in matters of family law; that ensured the exchange of required documents, smooth investigations, the hearing and protection of witnesses and experts, and, more generally, respect of the rights of the defence and the communication of all information relating to a case.

13. Mr. SADI said that the presence of the Minister of Justice was an indication of the Mongolian Government's great concern to discharge Mongolia's obligations under the Covenant.

14. Generally speaking, the third periodic report (CCPR/C/64/Add.2) submitted for consideration to the Committee, although very instructive on the legal system and legislation, did not provide sufficient concrete information. It was very useful to learn about legislation, but the Committee must be able to have an idea about its implementation in practice.

15. Concerning article 2 of the Covenant, which was primarily the focus of section I of the list of issues, he did not doubt that the new Constitution had been drafted in the spirit of the Covenant, but that did not suffice, because under article 2 States parties undertook to adopt such legislative or other measures as might be necessary to give effect to the rights recognized in the Covenant, and it was precisely with that in mind that the Committee sought more information.

16. He would also like to know whether the Covenant could be invoked directly before the courts by individuals and, in the event of a conflict between a domestic law and the Covenant, which text took precedence.

17. Mrs. HIGGINS thanked the Mongolian delegation for its presentation, which was particularly important in view of the very rapid evolution of the situation in the country in the past two years. She was pleased to note that the country was on the road to introducing democracy and that the authorities appeared to be devoted to protecting human rights, as could be seen by the accession to the Optional Protocol.

18. One way to ensure the exercise of human rights was to see to it that the population was aware of its rights and the observations made concerning the respect for those rights by bodies entrusted with the implementation of international instruments. It was therefore fair to ask whether the dialogue taking place with the Committee would in any way be made known to the population and how that same population would learn about the rights enshrined in the Optional Protocol.

19. In all countries undergoing a period of transition, provisions continued to be in force that were no longer compatible with the new philosophy of the government, and it would be interesting to know how the Penal Code was applied pending completion of its redrafting. Were the authorities simply ignoring those provisions that had become inapplicable while only retaining the others? Was a recasting of the Code of Penal Procedure also being considered?

20. She was concerned about the provisions of article 25, paragraph 18, of the new Constitution governing the proclamation of a state of emergency. The cases in which a state of emergency could be proclaimed were much more numerous than those set forth in article 4 of the Covenant. Another source of preoccupation was the fact that nothing was said in those provisions about the extent to which derogations from certain rights were allowed and, above all, about the intangibility of certain rights as stipulated in article 4, paragraph 2, of the Covenant.

21. Mr. PRADO VALLEJO welcomed the various changes that had taken place in Mongolia since the submission of the previous periodic report, as well as the Government's will to cooperate, as evidenced by the presence of a high-level delegation at the Committee table. The spirit in which the new Constitution had been drafted augured well for the future, since for the first time it contained specific provisions designed to ensure respect for human rights.

22. The new laws announced by the delegation were undoubtedly noteworthy, but the Committee needed to know what form the amendment of the Penal Code would take, and whether it was also proposed to revise the Code of Penal Procedure.

23. The provisions of the Constitution governing states of emergency were a matter for concern, since the reasons for which a state of emergency could be declared were too broad. For example, threats to the health and well-being of the population should not be grounds for declaring a state of emergency. Article 4 of the Covenant referred only to extremely serious cases in which "the life of the nation" was at risk. In view of the new mood that was in evidence in Mongolia, that provision should be amended. Furthermore, the

Covenant provided for the temporary - and solely temporary - suspension of certain rights, and established that there could be no derogation from certain others even during an emergency. He asked whether Mongolia envisaged bringing those provisions into line with the Covenant.

24. Mr. MULLERSON welcomed Mongolia's accession to the Optional Protocol. However, he wished to know whether the public had been informed of the content of that instrument and of the possibilities for remedies contained therein. The fact that the Committee had not thus far received any communications submitted by individuals did not necessarily mean that the rights set forth in the Covenant were never violated in Mongolia; more probably, it was indicative of a failure to make information available to the public. At a time when Mongolian society was opening up to the world, it was extremely important that the authorities should make the provisions of the Covenant widely known and inform citizens of their rights and of the remedies available to them if they considered themselves to be victims of a violation of one of the rights set forth in that instrument. He also wished to know whether the authorities had already established a mechanism enabling action to be taken with regard to communications submitted under the Optional Protocol.

25. With regard to the place of international treaties in Mongolian domestic legislation, he noted that, under article 10, paragraph 3, of the new Constitution, international treaties to which Mongolia was a party became effective as domestic legislation upon the entry into force of the laws concerning their ratification or accession. However, it was essential to know what place on the scale those international treaties occupied, and, in particular, whether they took precedence over domestic law. He asked for fuller information on that question.

26. Mr. ANDO joined Mr. Sadi in requesting the delegation to provide fuller details of the practical implementation of the legislation, in order to enhance its dialogue with the Committee.

27. He, too, welcomed Mongolia's accession to the Optional Protocol, adding that his own country might usefully follow Mongolia's example in that regard. However, if the procedure provided for in the Protocol was to be effective, it must be made known to the public at large. He asked what measures the authorities had taken or envisaged taking for that purpose, and what mechanism they intended to put in place in order to comply with the obligations entered into under the Protocol.

28. Like Mr. Müllerson, he wondered what place the Covenant occupied in domestic legislation, particularly in the light of the recent adoption of a new Constitution. He noted from article 10, paragraph 4, of that text that Mongolia was not bound by any international treaty or other instruments incompatible with its Constitution. Mongolian domestic legislation seemed by and large to be in accordance with the provisions of the International Covenant on Civil and Political Rights; but there were still some discrepancies. It was thus important to know the legal status of the Covenant in Mongolia.

29. On the question of compensation for past injustices, paragraph 4 of the report (CCPR/C/64/Add.2) referred to the rehabilitation of persons unlawfully repressed in the 1930s and 1940s. He wished to know what compensation was

provided for in those cases. He also asked for information on the abuses sanctioned by Y. Tsedenbal and his associates, referred to in the same paragraph. What had been their effect on the population, and what compensation did the authorities envisage offering to the victims?

30. With regard to equality of the sexes, he wondered to what extent the country's economic structures affected women's rights, and whether the authorities had difficulty in ensuring application of the principle of equality of the sexes, which was one of the objectives of the Covenant. He asked the Mongolian delegation to give examples of any such difficulties that had arisen, and to indicate whether, in the interim, the authorities were taking any temporary measures to redress the balance in favour of women.

31. Paragraph 11 of the report (CCPR/C/64/Add.2) stated that under article 142 of the Penal Code, gross violations of women's rights, if accompanied by violence, were punishable, inter alia, by imprisonment. He wished to know whether a gross violation of women's rights was regarded as a criminal offence when not accompanied by violence. Explanations of the means used to secure practical application of that provision of the Penal Code would be welcome.

32. Mr. EL SHAFEI welcomed the changes taking place in Mongolian society. He asked whether the Covenant had yet been translated into the various local languages, and whether the authorities had yet set up any organs responsible for amending the laws in order to bring them into line with the provisions of the international treaties ratified by Mongolia.

33. With regard to protection against discrimination, was the prohibition on discrimination on grounds of political opinion guaranteed by law? With the advent of a multi-party system, it was important that persons expressing political opinions different from those of the authorities should not be the victims of discrimination on that account. If that was not the case, was the Mongolian Government taking affirmative action to rectify the situation? He also wished to know what restrictions were imposed on the movement of foreigners in Mongolia. Lastly, he asked for fuller information on the participation of women in public life.

34. Mr. WENNERGREN said he was still unclear as to the place of the Covenant in Mongolian legislation. When introducing its second periodic report (CCPR/C/37/Add.2), the Mongolian delegation had stated that the provisions of the Covenant were reflected in domestic legislation and that, in certain situations, the provisions of international instruments had even taken precedence over domestic laws. Yet at that time the provisions of the international instruments that had been ratified by Mongolia could apparently not be invoked in court. Article 10 of the new Constitution stipulated that Mongolia would adhere to the universally recognized norms and principles of international law, but further stipulated that it would not abide by any international instrument incompatible with its Constitution. That seemed to suggest that the Constitution took precedence over any international agreement or treaty. However, the Mongolian delegation was now saying that the authorities applied the principle of the primacy of international law. Such conflicting information gave rise to confusion, and he asked for the matter to be elucidated, with particular reference to the text of the transitional

provisions of the Constitution. He also wished to know how the international treaties that had been ratified before January 1992, the date on which the new Constitution had been promulgated, had been brought to the attention of the public. Had they been, or would they be, published in the official legislative journals? In particular, what was the situation with regard to the Covenant?

35. Mr. AGUILAR URBINA also inquired what place the Covenant occupied in domestic legislation. The Mongolian delegation had said that the provisions of the international instruments took precedence over domestic law, but it was not possible to obtain a clear picture of the exact situation in that regard from a reading of article 10 of the Constitution.

36. The current period of transition was an extremely important moment in Mongolia's history. A major reform of the legislation was under way, but a number of laws did not yet reflect the standards, closely resembling the provisions of the Covenant, that were set forth in the Constitution. He asked for fuller information on the practical implementation of human rights standards in Mongolia.

37. He also requested more detailed information concerning the status of women in Mongolia. In practice, were women systematically subjected to any form of discrimination? If so, were the authorities taking any action to halt it?

38. With regard to states of emergency, which were referred to in article 25, paragraph 1.18, of the Constitution, he asked what was the difference between a state of emergency and martial law. Those terms were also to be found in article 19, paragraph 2, of the Constitution, which provided for restrictions on the enjoyment of human rights and freedoms in the event of the declaration of a state of emergency or martial law. He was less troubled than Mr. Prado Vallejo by the term "restrictions", which he took to mean the possibility of a suspension of rights and freedoms, and not of a derogation therefrom. However, article 4 of the Covenant was broader in scope than article 19 of the Mongolian Constitution, in the sense that it listed (in its paragraph 2) a series of articles from which no derogation under article 4, paragraph 1, was permitted. He asked for further comments from the delegation on that point, and, in particular, on the definition of a state of emergency. He added that a state of emergency was often declared in his own country, Costa Rica, because of the frequency with which it was struck by earthquakes, but that the enjoyment of human rights was never suspended in consequence of such a declaration. It seemed to him that in such circumstances some rights, such as the right to seek and receive information, should actually be strengthened.

39. Mr. AMARSANAA (Mongolia), replying to questions which had been raised regarding the position of the Covenant in national legislation, said that both the report (CCPR/C/64/Add.2) and his own statements should leave no doubt as to the precedence of international law over the provisions of national law in Mongolia. In that connection, he referred members to article 10 of the Constitution. Moreover, international instruments came into force in Mongolia on ratification. He pointed out that a new bill on international instruments

concluded by Mongolia was in preparation. The adoption of that text would permit the full implementation of article 10 of the Constitution. However, the current text of paragraph 4 of that article would probably not be incorporated in the new legislation. That having been said, there was no doubt that an appropriate mechanism would need to be established for the implementation of the provisions of the Optional Protocol, and much remained to be done in that field. Mongolia was faced by many problems (paper and petrol shortages, etc.) which hampered the adoption of the measures needed. Such problems had also affected the dissemination of information regarding the provisions of the Covenant. Thanks to the privately owned media, however, the population had been able to receive some information on international treaties which had been ratified by Mongolia. Thus, the provisions of the Covenant and the Optional Protocol had been published in privately owned newspapers. For the time being, that information had provoked hardly any reaction from the population.

40. On the question regarding the victims of repression, he recalled that Mongolia had suffered large-scale waves of repression during the 1930s and 1940s. By way of illustration, he said that, of the 750 monasteries which had existed before that period, there remained only two. Since 1990 the authorities had been concerned to make reparation to the victims of repression. A decree to that effect had been adopted but, particularly for economic reasons, it had not yet been applied. A new bill on the issue was in preparation and would be considered by the Great People's Khural before the end of the year. There had recently been a number of initiatives which, generally speaking, would benefit the victims of repression.

41. In reply to a question from Mr. Ando, he pointed out that Mongolia was basically an agricultural country; the phenomenon of privatization was also making headway in the agro-pastoral sector in which small enterprises were springing up and where the State controlled no more than 40 per cent of the livestock. The transformation of society and the economy had certainly produced a number of problems which must be settled with due respect for human rights. The question of human rights could clearly not be dissociated from that of the economic, social and cultural development of the country.

42. Regarding equality of men and women, article 14 of the Constitution prohibited all forms of discrimination, particularly discrimination based on sex. Equality of rights in the political, economic and cultural fields was guaranteed to women in Mongolia. In addition, three women had recently been elected to the Great People's Khural. Women enjoyed the same rights as men with regard to working conditions and remuneration, education and social security. In 1991 women had represented 43 per cent of the working population.

43. In reply to Mr. Ando's question regarding violations of women's rights, he said that activities intended to prevent women from enjoying equal rights, particularly if accompanied by violence or the threat of violence, represented offences under article 142 of the Penal Code. If, on the other hand, such activities were not accompanied by violence or the threat of violence, they fell within the scope of other laws, such as the Labour Code or texts concerning land use, consumer rights, etc.

44. In connection with laws formerly applicable in Mongolia, the Great People's Khural had decided that all legal texts must be harmonized with the Constitution by 1996; that was a substantial task but 60 revised legal texts had already been adopted and, between 1992 and 1993, another 70 revised bills would be submitted for approval. Moreover, a special proposal had recently been submitted to the Government for the repeal of 475 legal texts which had been found to be not in conformity with the Constitution.

45. In connection with states of emergency, a distinction must be drawn between martial law, which could be introduced in the case of a threat of war from abroad, and a state of exception which could be introduced by decree as, for example, in the case of natural disaster. In that connection, the Ministry of Justice had undertaken to prepare a bill on emergency situations which would define responsibilities in such situations and the modalities for the possible suspension of the application of certain constitutional provisions.

46. There was no discrimination against women in the political field, but it was possible that some discrimination might still exist in everyday life in certain organs or enterprises. In such cases, the victim of discrimination could sue in court. In addition, since 1990, the principle of the multi-party system had been enshrined in the Constitution and, in the future, there could no longer be any discrimination against legally recognized political parties. In connection with the freedom of movement of foreigners compared with Mongolian citizens, there had indeed in the past been a number of differences in that foreigners had been required to obtain permission from the Ministry of Foreign Affairs and the Department of Police before making certain trips; such restrictions had since been abolished.

47. Pursuant to the Constitution and the recent decision of the Great People's Khural, all treaties and instruments ratified by Mongolia before 1992 would be considered to form part of the legislation in force in the country. In addition, guarantees of respect for human rights had also been incorporated into the Constitution and the Great People's Khural would adopt all necessary laws for the implementation of those guarantees. Accordingly, bills were already being prepared, particularly in regard to the right to housing, copyright guarantees, the right to social security and the right to free medical care.

48. The CHAIRMAN thanked the delegation of Mongolia for its replies to the Committee's questions. He invited Committee members who so wished to put further questions to the delegation of the State party.

49. Mr. MULLERSON asked the delegation of Mongolia to clarify whether the 3 women recently elected to the Great People's Khural which, according to the Constitution, comprised 76 members, had been elected, for example, during a partial change of the membership of that organ or whether the Great People's Khural included only 3 women in its entire membership.

50. Mrs. HIGGINS requested further information regarding cases in which rights included in the Constitution could apparently be derogated from. She also wished to know whether the Constitution fully guaranteed that none of the rights enumerated in article 4, paragraph 2, of the Covenant could be

derogated from under national legislation. Article 19 of the Constitution certainly contained a number of guarantees but it remained to be seen whether it might not be possible to derogate from the rights covered by articles 8, 15 and 16 of the Covenant in particular.

51. Mr. WENNERGREN said that, according to article 10, paragraph 4, of the Mongolian Constitution, in the case of incompatibility between an international instrument and the Constitution, the latter would prevail. In addition, article 66 of the Constitution stated that the Constitutional Court was to consider whether laws were compatible with the Constitution; in that connection, he wished to know whether the Constitutional Court was competent to consider whether the provisions of the Covenant were compatible with those of the Constitution of Mongolia.

52. The CHAIRMAN invited the delegation of Mongolia to reply to the supplementary questions raised orally by members of the Committee.

53. Mr. AMARSANAA (Mongolia), replying to Mr. Müllerson, said that, in the elections to the Great People's Khural in July 1992, 3 women had been elected out of a total of 270 candidates. In 1990, there had been 2 women out of a total of 430 elected members.

54. On the issue of states of emergency, he pointed out that a new bill was being prepared to amend existing legislation with a view to ensuring greater respect for human rights. In any case, no provision of current legislation permitted any derogation from the rights of citizens. Moreover, with a view to ensuring positive development in the legislative field, a Constitutional Court had recently been created: the Little Khural had approved the statutes of that Court, which would deal with possible conflicts and report to the Great People's Khural on matters concerning conformity between laws, the Constitution and international instruments ratified by Mongolia. Consideration of the provisions of international instruments was the specific responsibility of the Ministry of Foreign Affairs.

55. The CHAIRMAN invited the Mongolian delegation to reply to the questions in section II of the list of issues, which read:

"II. Right to life, treatment of prisoners and other detainees and liberty and security of the person (arts. 6, 7, 9 and 10)

(a) What are the rules and regulations governing the use of firearms by the police and security forces? Have there been any violations of these rules and regulations, and, if so, what measures have been taken to prevent their recurrence?

(b) Please clarify the statement in the report that the death penalty has been established as 'an alternative to imprisonment for varying terms, not as the primary but as a secondary option' (paragraph 14 of the report).

(c) How often and for what crimes has the death penalty been imposed and carried out since the consideration of Mongolia's second periodic report?

(d) Has any consideration been given to the abolition of the death penalty and accession to the second Optional Protocol to the Covenant?

(e) With reference to paragraphs 42 and 43 of the report, please provide information on action taken to make the Corrective-Labour Code more humane and to bring the penitentiary system in line with the commitments entered into by Mongolia under international conventions and agreements on human rights.

(f) Please clarify the legal value of testimony extracted through violence or insulting treatment (paragraph 18 of the report).

(g) Please elaborate on the plans being made to introduce new legal provisions which will strengthen and guarantee the right to liberty and security of the person (paragraph 21 of the report)."

56. Mr. AMARSANAA (Mongolia), replying to the questions in paragraph (a) of section II of the list, said that the use of firearms by the police and security forces was governed by a decree approved in 1986 by the Great People's Khural, which contained instructions issued by the Ministry of Public Security and the Ministry of the Interior. In 1991 another decree had been passed, defining very specifically the powers of the members of the police and security forces and strictly regulating the use of firearms. In addition, the Police and Security Department had issued very strict instructions in that regard. Since the publication of the new decree and the new instructions, no violations of the regulations had been recorded, except in a few small communities, where some minor infringements might possibly have occurred: however, steps had already been taken to punish such offences.

57. On the question of the death penalty, referred to in paragraph (b), he stated that under article 16 of the new Mongolian Constitution the death penalty could only be imposed for very serious crimes defined under the Penal Code. Under article 21 of the new Penal Code, adopted in 1986, the death penalty was applicable only to a very restricted number of cases. In actual practice, it was generally quickly commuted to a sentence of imprisonment. Under the new Penal Code, the death penalty was reserved for particularly serious crimes, notably treason, terrorism, premeditated homicide with aggravating circumstances, banditry, or an attempt on the life of a member of the militia or a national trooper. However, any judge imposing the death penalty had the option of commuting the sentence. In addition, under article 21 of the Penal Code, the death penalty could not be applied to persons aged under 18, to women, or to men aged 60 and over. Moreover, any person sentenced to death was entitled to request a pardon. Lastly, it was now intended to make premeditated homicide in aggravating circumstances the only crime carrying the death penalty.

58. The Mongolian Government, in the person of the Minister of Justice, had recently invited international human rights bodies, notably Amnesty International, to visit the country to monitor the extent to which human rights were being respected, particularly in regard to the imposition of the death penalty. Those bodies had succeeded in obtaining information and had

submitted a report on the subject. The police had also published statistics showing that the number of homicides committed had been 165 in 1991 and 109 in 1992, and that only 20 men sentenced to death had been executed.

59. With regard to the question in paragraph (d), he said that, although the Government had decided to maintain the death penalty for the time being, the new Penal Code now in course of preparation would remove certain offences from the list of crimes subject to the death penalty, for example, spying and attempts on the life of a member of the militia. With regard to ratification of the second Optional Protocol to the Covenant, the question had been referred to the Ministry of the Interior for consideration.

60. Details had already been given during consideration of the second periodic report of amendments that had been made to the Corrective-Labour Code. In 1990, the Government had decided to set up, in all districts, provinces and towns, prisons run along liberal lines for persons convicted of relatively minor offences. Prisoners could thus keep in contact with their families and friends, and could benefit from a rehabilitation programme designed to enable them to lead a normal life after serving their sentence. Since 1990, prisoners had enjoyed the right to attend religious services as well as the right to receive visits from representatives of independent organizations. The Corrective-Labour Code, which had been adopted in 1981, had been widely criticized, which was why many of its provisions were now to be made more humane. While it was true that the country's transition to a market economy, the economic crisis, shortages and price increases posed many problems, the Government was nevertheless determined to reform the prison system in general with a view to strengthening respect for the provisions of international human rights instruments to which Mongolia had acceded.

61. With regard to testimony extracted through violence or insulting treatment (para. (f)), article 193 of the Penal Code provided that any person found guilty of such acts should be dismissed and sentenced to imprisonment for a term of up to 10 years in cases of cruel treatment. Under article 207, extracting testimony by violence, threats or any other illicit means was a crime punishable by two to eight years' imprisonment.

62. Concerning paragraph (g), he said that his Government had taken many measures to improve legislation in the field of human rights protection, and was planning to introduce new legal provisions to strengthen and guarantee the right to liberty and security of person. In 1990, the Great People's Khural had passed an act providing for a procedure by which citizens could appeal to the courts against unlawful actions committed by State organs or officials. A number of other bills concerning such matters as the right to housing, the right to child care, the right to freedom of religion and the right to freedom of assembly were in course of preparation.

63. The CHAIRMAN thanked the Mongolian delegation for its replies to the questions raised in section II of the list, and invited those members of the Committee who so wished to put additional questions.

64. Mr. SADI noted that, according to the report of Mongolia, the Government considered the question of the right to life only in the context of issues related to the death penalty. He therefore wondered how much importance was

attributed, for instance, to efforts to combat AIDS, to the development of health care and to environmental improvements. Moreover, in the case of torture, he assumed that such a practice was forbidden by the Constitution, but he would like to know whether the Government was planning to take administrative measures to give tangible effect to that ban, for example, by organizing information campaigns for members of the police and security forces. He thought it essential that the provisions of the Constitution in that regard should be expressed in the form of regulations directly applicable by law enforcement personnel and judicial officers.

65. Mr. WENNERGREN said that he would like to have statistics on the number of persons held in corrective-labour colonies and prisons, and he inquired whether the Procurator continued to supervise the penitentiary system. With regard to the right to security of the person, article 16, paragraph 13, of the Constitution stated that no one would be arrested and detained except for the reasons and in conformity with the procedure determined by law. If the Covenant was to be considered as forming part of Mongolian law, did that mean that the provisions of article 9 to the effect that "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge ..." formed part of Mongolian law? In other words, had steps been taken to implement the provisions of article 9 of the Covenant?

66. Mrs. HIGGINS said that she had noted, from the answers to the written questions appearing in the list, that it was unlawful to compel a person to testify and that, according to article 16, paragraph 14, of the Constitution, no one could be obliged to testify against himself. She would like to know whether or not testimony obtained by illegal methods constituted evidence admissible in court.

67. Second, the time-limit allowed to persons under sentence of death for filing an appeal with the Supreme Court was 10 days and, if the appeal was rejected, the time-limit for filing an appeal for clemency was also 10 days. Did the Minister of Justice of Mongolia not consider that that was a very short time in which to prepare an appeal?

68. Mr. PRADO VALLEJO said, with reference to protection against torture, that he assumed that there was no machinery for preventing acts of torture, investigating such cases, punishing culprits and granting redress to victims. He considered it necessary to make good that deficiency. Similarly, had the Government of Mongolia considered the possibility of ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment?

69. He would also like to know whether the remedy of habeas corpus existed in the Mongolian legal system, whether it could be invoked in practice and whether it had, in fact, been invoked.

70. Under article 9 of the Covenant, anyone who was arrested should be informed, at the time of arrest, of the reasons for his arrest. Under article 16, paragraph 13, of the Constitution of Mongolia, it was stated that a person who was arrested was informed within a certain period of time of the reasons for his arrest. He would like to know what that period of time was and whether the wording used might not give rise to abuses.

71. Finally, with regard to the right to leave one's country, paragraph 46 of the report (CCPR/C/64/Add.2) stated that on average, 5 per cent of visa applications were declined each year "for reasons of national security, to protect the rights, interests, health and dignity of society and its citizens ...". He would like to know what was meant by the interests and dignity of society in the context of granting or denying an exit visa.

72. Mr. ANDO interpreted as a form of discrimination against men the fact, stated in paragraph 14 of the report, that the death penalty was not applied to women, or to men aged 60 and over. The same remark also applied to the statement in paragraph 29 to the effect that weapons might not be used against women or minors trying to escape. The reasons for those provisions might stem from traditional moral standards, which sought to shield women from any form of physical constraint. He would like to know the reasons for what could be considered, in both cases, as a form of discrimination between various categories of suspected or convicted persons.

73. Second, in connection with the treatment of inmates of corrective-labour colonies, paragraph 26 of the report stated that, according to article 6 of the Corrective-Labour Code, "the main means of reform and rehabilitation are ... political education, general education and vocational training". What was the content of political education? On the same subject, paragraph 41 stated that there was "only one educational-labour colony for minors and one corrective-labour colony for women". In view of the size of Mongolia, he wondered whether the fact that there were so few establishments was attributable to economic considerations or to the small number of detainees, and he would like to know whether that was not a source of difficulty.

74. Mr. AMARSANAA (Mongolia) said that he would reply to the various questions put by members of the Committee, beginning with the right to life. Article 16, paragraph 1, of the Constitution dealt with the right to life only in the context of capital punishment. The other aspects of the right to life were addressed in other paragraphs of article 16.

75. With regard to torture, he said that the Government had decided in April 1992 to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and had entrusted the study of that project to the Little Khural. Issues related to torture gave rise to a range of administrative as well as legislative provisions. Thus, officials who had used unlawful methods were dismissed.

76. Statistics had been requested on the prison population. At present there were only 3,328 detainees in Mongolia and his delegation had in its possession statistics broken down by year and category of offence. Under the Constitution, the Procurator was responsible for the overall prison system.

77. The procedure for legal remedies available to convicted persons was at present regulated by the Constitution. However, as far as practice was concerned, amendments should soon be made to the Penal Code - a process that was in hand - since prisoners did not yet have the right of appeal under the earlier provisions. The right to liberty and security of person was protected by article 16, paragraph 13, of the Constitution. Further, since 1989

two categories of offence no longer incurred the death penalty, namely, offences against private property and offences against State or social property. With regard to the period allowed for making an appeal for clemency after the Supreme Court had rejected an initial appeal, Mrs. Higgins was right to say that it was not long enough. The laws of Mongolia had become somewhat archaic and would have to be reviewed.

78. With regard to protection against torture, monitoring machinery was provided in the Penal Code, legislation had been approved by the Ministry of Justice and the Director-General of the Police, and there was a law which provided for compensation for victims. As far as the remedy of habeas corpus was concerned, the future legislation of Mongolia would be supplemented in that regard. Concerning the period of time within which a person who was arrested and detained must be informed of the reasons for his arrest and detention, article 16, paragraph 13, of the Constitution stated that the person in question, his family and his lawyer would be informed of the reasons for the arrest within a period set by the law. Under the Penal Code, a person who was detained was immediately notified of the reasons for his arrest and his family was informed within a period of 24 hours by the police or by another authority. There was therefore an obligation of rapid notification.

79. Questions had been asked about exit visas. Prior to 1991, a visa had been required in order to leave the country and travel abroad. Recently, orders put into effect by the police and the Ministry of Foreign Affairs had introduced new arrangements.

80. Mr. Ando had noted that weapons might not be used against women or minors trying to escape from prison; that prohibition had nothing to do with tradition but was established by law. Mr. Ando had also referred to article 6 of the Corrective-Labour Code. That Code dated from 1981 and was in the process of being amended; in 1990, corrective-labour colonies had been organized in the provinces. With regard to political education, it should be pointed out that today there was no longer any political propaganda in Mongolia, where even the history of the Party could no longer be taught, having been replaced by religious activities such as prayer. Finally, Mr. Ando had expressed surprise that there was only one educational-labour colony for minors and one corrective-labour colony for women. At present 39 minors were being detained and 61 women incarcerated, and 1 institution for each category was therefore quite sufficient. The statistics dated from 9 June 1992. He did not believe that that created difficulties.

81. The CHAIRMAN invited the Mongolian delegation to reply to the questions raised in section III of the list of issues, which read:

"III. Right to a fair trial (art. 14)

(a) In view of the statement in paragraph 50 of the report that Mongolian legislation should to a greater degree reflect article 14 of the Covenant, please provide information on any shortcomings in Mongolian legislation in that regard as well as on any steps being taken to overcome them.

(b) How is the independence and impartiality of the judiciary guaranteed?

(c) Please provide information on the defence's rights and the availability of free legal assistance to criminal defendants."

82. Mr. AMARSANAA (Mongolia), responding first of all to the request for information in paragraph (a), said that, in practice, judges and prosecutors did not have all the necessary means to ensure the right to a fair trial, and that Mongolian legislation had shortcomings that needed to be overcome. To that end, work was currently in progress on a Courts Act designed to eliminate rules such as that whereby counsel was not entitled to participate in the trial until the hearing stage, and did not have access to the findings reached before the opening of the trial. Such provisions were contrary to the Constitution, and that problem would therefore have to be resolved.

83. The independence and impartiality of the judiciary were guaranteed by articles 47 and 48 of the Constitution, as well as by other provisions in the form of orders. Under article 47, the courts were established exclusively by virtue of the Constitution and other laws and, under article 48, the structure of the courts and the legal basis for their activities were defined by law. It could therefore be seen that the impartiality of the judiciary was guaranteed by the Constitution and the laws. All State bodies and other institutions were required to respect the independence and impartiality of judges and, under the new Constitution, no interference in judicial procedures was permitted without express justification.

84. With regard to the rights of the defence and the availability of free legal assistance to criminal defendants, article 55 of the new Constitution stated that an accused person was entitled to be defended and was eligible for legal assistance in accordance with the law and at his request. A law dealing with the right of persons accused of a criminal offence to be defended free of charge was currently being prepared.

85. Mrs. HIGGINS said that the Mongolian delegation's replies were all the more welcome in that the passage of the report regarding the implementation of article 14 of the Covenant was extremely brief - only three lines (para. 50). The statement by the Minister of Justice had shown that the Mongolian Government was fully aware of the inadequacies of the system with regard to the right to a fair trial and the measures required to remedy that state of affairs. It was therefore extremely difficult to see what the members of the Committee could usefully contribute to that endeavour.

86. She had understood that the Penal Code and the Code of Penal Procedure were being revised and that there were many gaps to fill. The Constitution, for its part, not only dealt with the subjects that might be expected, namely the structure of the judicial system and the modus operandi of the courts, but also contained brief articles on questions that could be expected to appear either in the Constitution or in other legislation. For example, article 53 provided for the assistance of a translator when the person on trial did not understand the Mongolian language, article 54 stipulated that trial proceedings should be public except in cases specifically excluded by the law, and article 55 laid down the right to be defended.

87. Article 54, which stated that trials should be public except in cases specifically excluded by the law, did not say which types of trial should be held in private according to the law. It should be ensured that the cases concerned were those provided for by the Covenant, in other words basically cases concerning the parties' private lives, or else cases concerning minors or State security. It was to be hoped that, when the Mongolian authorities drew up the new legislation in that area, they would not only take inspiration from article 14 of the Covenant and try to reproduce all its provisions, but would also draw upon the Committee's general comments on article 14 and its jurisprudence. All the relevant documentation could be made available to the Mongolian authorities by the Secretariat.

88. Mr. ANDO also remarked on the brevity of the report's treatment of article 14 of the Covenant and raised a general question. The three periodic reports submitted by Mongolia showed that that country's legal order must have been based on the model of Soviet Russia. That model could now be said to have lost legitimacy, and Mongolia would have to find its own formulas. The Mongolian Constitution was divided into two parts, one concerning the individual rights of citizens, which could be amended to bring it into line with international instruments, and the other regarding the structure of the powers established to give effect to those rights. Two basic principles that were important in that connection were the division of powers in order to prevent abuses, and the independence of the judiciary. In that connection, he would like to know what models would serve Mongolia in elaborating its own system for the safeguarding of human rights. Mrs. Higgins had mentioned the assistance that could be provided by the United Nations Centre for Human Rights, but some countries also asked jurists from other regions to help them in drafting their new constitutions. Was Mongolia planning to do the same?

89. The CHAIRMAN said that the Mongolian delegation would reply to members' oral questions at the afternoon meeting.

The meeting rose at 1 p.m.